

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN THE MATTER OF: : **CASE NO.: 11-56738**
MADELYN RENEE SARTAIN : **CHAPTER 13 (JUDGE PRESTON)**

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:

Debtor(s).

:

Madelyn Renee Sartain

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:
:

Plaintiff

: **Adv. Pro. No:**

:
:
:

v.

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:
:
:

State of Ohio Department of Taxation :
Bankruptcy Division :
P.O. Box 530 :
Columbus, OH 43216 :

Defendant

:

COMPLAINT TO DETERMINE PRIORITY AND EXTENT OF LIENS

Madelyn Renee Sartain, by and through undersigned counsel, for her Complaint against the Defendant, alleges as follows:

INTRODUCTION

1. This adversary action is filed to have this Court determine that the wholly unsecured tax lien held by the State of Ohio Department of Taxation on Plaintiff's residence may be modified and treated in this Plan as unsecured, and then canceled following the Plaintiff's receipt of a Chapter 13 Discharge.

PARTIES

2. Plaintiff, Madelyn Renee Sartain, is a resident of Franklin County and filed a Petition (Bankruptcy Case Number 11-56738) on June 27, 2011 ("Petition Date").
3. Defendant, State of Ohio Department of Taxation, is an Ohio State administrative agency.

JURISDICTION AND VENUE

4. This Court has jurisdiction to determine this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the general order of reference entered in this district.

5. This matter is a core proceeding under 28 U.S.C. 157(b)(2)(K). Venue is proper under 28 U.S.C. § 1409(a).

CLAIM OF ACTION

6. Plaintiff repeats and re-alleges paragraphs 1 through 5 as if fully rewritten herein.
7. Plaintiff is the owner of residential real property located at 6510 Royal Dublin Court, Dublin, Ohio 43016 (the “Property”).
8. The Property had a fair market appraised value of \$280,000.00 as of the Petition Date. A copy of the filed appraisal is attached hereto as Exhibit A.
9. As of the Petition Date, the Property was subject to liens as described in the following table:

Lien Holder:	Lien Amount:	Recording or Cert. Date:	Reference Number
Freedom Mortgage Corporation (Claim 15)	\$238,908.41	November 3, 2003	200311030350980
Bank of America (Claim 29)	\$30,826.24	November 3, 2003	200311030350984
Huntington National Bank	\$159,058.00	October 1, 2007	07-JG-025913
Dianna L. Leimbach	\$1,110.00	October 21, 2009	09-JG-042412
State of Ohio Department of Taxation (Claim 28)	\$4,258.34	February 22, 2011	11-JG-08038
State of Ohio Department of Taxation (Claim 28)	\$3,032.79	February 22, 2011	11-JG-08053
State of Ohio Department of Taxation (Claim 28)	\$12,354.12	February 22, 2011	11-JG-08099
State of Ohio Department of Taxation (Claim 28)	\$378.30	February 22, 2011	11-JG-08175
State of Ohio Department of Taxation (Claim 28)	\$833.10	February 22, 2011	11-JG-08899
Internal Revenue Service	\$2,600.61	June 22, 2011	201106220077958

10. As of the Petition Date, the Property was subject to a first mortgage lien in favor of Freedom Mortgage Corporation filed in the Franklin County Recorder’s office, Doc. No 200311030350980 on November 3, 2003. According to Proof of Claim No. 15, filed in this case on August 8, 2011 the balance on the first mortgage at the time of filing was \$238,908.41. A copy of Proof of Claim No. 15 is attached as Exhibit B.

11. As of the Petition Date, the Property was subject to a second mortgage lien in favor of Bank of America filed in the Franklin County Recorder's office, Doc. No. 200311030350984 on November 3, 2003. Bank of America filed Proof of Claim No. 29 on December 12, 2011, but it does not list the balance, however, the balance at the time of filing was \$30,826.24. A copy of Proof of Claim No. 29 is attached as Exhibit C. A copy of the 2nd Mortgage is attached as Exhibit D.
12. As of the Petition Date, the Property was subject to a lien third in priority from a certificate of judgment filed October 1, 2007, in favor of Huntington National Bank, with a balance of \$159,058.00 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 07-JG-025913. The Huntington National Bank judgment docket is attached as Exhibit E.
13. As of the Petition Date, the Property was subject to a lien fourth in priority from a certificate of judgment filed October 21, 2009, in favor of Dianna L. Leimbach, with a balance of \$1,110.00 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 09-JG-042412. The Dianna L. Leimbach praecipe is attached as Exhibit F.
14. As of the Petition Date, the Property was subject to a lien fifth in priority from a certificate of judgment filed February 22, 2011, in the State of Ohio Department of Taxation, with a balance of \$4,258.34 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 11-JG-08038. This praecipe is attached as Exhibit G.
15. As of the Petition Date, the Property was subject to a lien sixth in priority from a certificate of judgment filed February 22, 2011, in the State of Ohio Department of Taxation, with a balance of \$3,032.79 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 11-JG-08053. This praecipe is attached as Exhibit H.
16. As of the Petition Date, the Property was subject to a lien seventh in priority from a certificate of judgment filed February 22, 2011, in the State of Ohio Department of Taxation, with a balance of \$12,354.12 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 11-JG-08099. This praecipe is attached as Exhibit I.
17. As of the Petition Date, the Property was subject to a lien eighth in priority from a certificate of judgment filed February 22, 2011, in the State of Ohio Department of Taxation, with a balance of \$378.30 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 11-JG-08175. This praecipe is attached as Exhibit J.
18. As of the Petition Date, the Property was subject to a lien ninth in priority from a certificate of judgment filed February 22, 2011, in the State of Ohio Department of Taxation, with a balance of \$833.10 according to the praecipe for lien filed in the Court of Common Pleas for Franklin County, Ohio with Case No. 11-JG-08899. This praecipe is attached as Exhibit K.

19. As of the Petition Date, the Property was subject to a lien tenth in priority in favor of the Internal Revenue Service, with a balance of \$2,600.61 according to the tax lien filed in the Franklin County Recorder's office, Doc. No. 201106220077958 on June 22, 2011.
20. Using the valuation as set forth above, the Property is worth less than the amount owed on the liens superior to the liens of the State of Ohio Department of Taxation. The total amount owed on the liens ahead of the State of Ohio Department of Taxation is \$429,892.65 and the value of the Property is \$280,00.00, leaving no equity to which the State of Ohio Department of Taxation's liens can attach.
21. The confirmed Plan provides for treatment of the State of Ohio Department of Taxation as wholly unsecured.
22. The State of Ohio Department of Taxation has filed its proof of claim as unsecured.
23. Due to the value of the Property and the superior liens, the liens of Defendant State of Ohio Department of Taxation are wholly unsecured and it is not the holder of a secured claim pursuant to the pertinent provisions of 11 U.S.C. §506(a) and (d)

WHEREFORE, the Plaintiff respectfully demands a judgment determining the priority and extent of Defendant's liens against the Property as follows:

- i. The liens of Defendant State of Ohio Department of Taxation are wholly unsecured and void, and it is entitled to its unsecured claim;
- ii. That the Court enter an order requiring Defendant to release the Tax Lien within 60 days of the date of Plaintiff's discharge in the underlying bankruptcy case;
- iii. That the Order of the Court further provide that, if Defendant does not file a release of the Tax Lien with the Franklin County Common Pleas Court within 60 days of the Plaintiff's discharge in the underlying bankruptcy case, then the Plaintiff may file submit an order granting this Complaint to the applicable court or recorder's office as evidence of the release of the judicial liens;
- iv. Any and all other relief to which the Plaintiff may appear entitled.

Respectfully submitted,
/s/ Sondra O. Bryson
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